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January Second Half Developments

Overview

A couple of the measures in Dodd Frank designed to prevent another financial melt down are nearer implementation. The largest 40 or so banks in the US are required to do a resolution plan or living will for the FDIC. For some of these banks, this is a useless and expensive exercise since these banks will never be subject to a “resolution” by the FDIC. For all the emphasis on “risk-based” activities, one would expect that this process would also be risk-based and not apply across the board. Well that is not the way this process is being implemented and the government will soon have “road maps” on how they might deal with the failure of one of the nation’s largest banks. Smaller banks will also have to undergo an annual stress test to see how they might respond under differing financial scenarios. These tests have yet to prove their utility, but the regulators will have more information at their disposal for evaluating banks.

Registration of Swap Dealers and Major Swap Participants

On January 19, 2012, the CFTC published its regulations that establish the process for the registration of swap dealers and major swap participants that require such entities to become and remain members of a registered futures association. This rule is effective March 19, 2012. Regulation 23.21(c) makes clear that each affiliate of an insured depository institution described in Dodd-Frank Act Section 716(c) is subject to the registration provisions. The proposed rule was published on November 23, 2010 at: <http://edocket.access.gpo.gov/2010/2010-29024.htm>. The final rule may be found at: <http://www.gpo.gov/fdsys/pkg/FR-2012-01-19/html/2012-792.htm>

NFA to Register Swaps Dealers and Major Swaps Participants

On January 19, 2012, the CFTC issued a notice authorizing the NFA to process and grant applications for registration and withdrawals of registration with respect to swap dealers (SDs) and major swap participants (MSPs) as part of the CFTC’s rulemaking noted above. See the notice at: <http://www.gpo.gov/fdsys/pkg/FR-2012-01-19/html/2012-791.htm>

### Resolution Plans for Larger Banking Organizations

On January 23, 2012, the FDIC published its final rule requiring an insured depository institution with \$50 billion or more in total assets to submit periodically to the FDIC a plan for the resolution of such institution in the event of its failure ("Resolution Plan"). The plan should be designed in a manner that ensures that depositors receive access to their insured deposits within one business day of the institution's failure, maximizes the net present value return from the sale or disposition of its assets and minimizes the amount of any loss to be realized by the institution's creditors. The Rule would apply to 37 insured depository institutions upon its effective date. See the final rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-01-23/html/2012-1136.htm>

### Annual Stress Test Requirements for Insured Institutions

On January 23, 2012, the FDIC published a proposed rule that would require state nonmember banks and state savings associations supervised by the Corporation with total consolidated assets of more than \$10 billion to conduct annual stress tests in accordance with the proposed rule, report the results of such stress tests to the Corporation and the Fed. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-01-23/html/2012-1135.htm>

### Annual Stress Test Requirements for National Banks

On January 24, 2012, the OCC published a proposed rule on stress tests. This proposed rule would require national banks and Federal savings associations with total consolidated assets of more than \$10 billion to conduct an annual stress test as prescribed by this proposed rule. In addition to the annual stress test requirement, such institutions would be subject to certain reporting and disclosure requirements. The OCC projects that 61 institutions will have to respond to this requirement and it will take about 1000 hours for each bank to complete its annual stress test. See the proposed rule at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-01-24/html/2012-1274.htm>

*This advisory is a service of Connell & Andersen LLP for our clients and friends. It is not a full recitation of all developments. The descriptions are summaries of complex and detailed laws and regulations and may be incomplete or misleading. We invite any of our readers to contact us to discuss any items contained herein for further elaboration.*